

CASSELS BROCK

April 3, 2013

VIA OVERNIGHT COURIER

Ms. Janice B. Payne
Nelligan O'Brien Payne LLP
50 O'Connor
Suite 1500
Ottawa, Ontario
K1P 6L2

ahamilton@
tel: [REDACTED]
fax: [REDACTED]
file #: 41223-1

Dear Ms. Payne:

Re: Agency Matter
Your File No. 16138-2

Enclosed please find our firm's trust cheque in the amount of \$13,560.00 representing payment of your invoice dated March 4, 2013.

Yours truly,

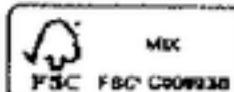
Arthur Hamilton

ALH/sd
Encl.

ABLED DEPOSE
W/SENATE SUBSENATE

for DEPUTY CLERK
TOM GREGORY


28/X/2013



CASSELS BROCK & BLACKWELL LLP

108420

SCOTIA PLAZA, SUITE 2100 40 KING STREET WEST,
TORONTO, CANADA M5H 3C2
Telephone (416) 869-5300

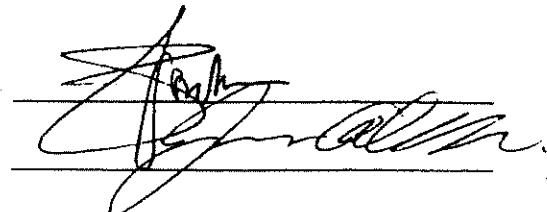
BANK OF NOVA SCOTIA
44 KING STREET WEST
TORONTO, ONTARIO M5H 1H1

04-03-2013
DATE MM-DD-YYYY

Thirteen Thousand Five Hundred Sixty DOLLARS and 00/100

CDN FUNDS
\$13,560.00

PAY **NELLIGAN O'BRIEN PAYNE LLP**
TO THE
ORDER OF



108420 1347696002 11971 18

Re: Smear - Background FYI

From: nigel [REDACTED]
To: mdduffy [REDACTED]
Subject: Re: Smear - Background FYI
Date: Tue, Dec 4, 2012 9:03 am

Mike,

I am told that you have complied with all the applicable rules and that there would be several Senators with similar arrangements. I think that the Standing Committee might review those rules.

This sure seems to be a smear. I don't know whether it is actionable, my guess is that it is not. This reporter is usually careful that way.

Nigel
Sent from my BlackBerry device on the Rogers Wireless Network

ABLED DEPOSED
In Senate by Senator

26/X/2013
per DEPUTY CLERK
Sous Gouvernement

From: Wright, Nigel [REDACTED]
To: MDDuffy [REDACTED]
Subject: RE: Duff at 613 [REDACTED]
Date: Mon, Feb 11, 2013 5:23 pm

I had no foreknowledge of it. When I learned of it I asked for all unilateral action from that office to cease before being cleared with me. I was not pleased On its face, it does not make our task more complicated I think, although the "with interest" is new to me.

From: MDDuffy [REDACTED]
Sent: February 11, 2013 5:05 PM
To: [REDACTED]
Cc: Wright, Nigel
Subject: Duff at 613 [REDACTED]

What does Marjory's letter mean for our talks?

Mike

ABLED REPUBLIQUE
In Senate au Sénat
28/12/2013
[Signature]
DEPUTY CLERK
ROBERT GREFFIER



ABLED EPUB
In Senate au Sénat

MEMORANDUM

TO: The Honourable Senator Duffy
The Honourable Senator Wallin, OC, SOM
FROM: Christopher McCreery
SUBJECT: Qualifications for Senators
DATE: 6 January 2009

28/1/2013
Y/0/R

DEPUTY CLERK
GOUVERNEMENT

Section 33

33. If any Question arises respecting the Qualifications of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

Translation: The Senate is the master of its own house with regards to the proscribed property and residency qualifications required to serve in the Upper Chamber. It is up to Senators to bring up issues related to qualifications; it is not a matter for the courts.

The last time a Senator was disqualified was in 1915. All 9 of these Senators were disqualified for having missed two consecutive sessions. Since 1867 a total of 9 Senators have been disqualified;

Edward Kenny (Conservative) 1876
Walter Dickson (Conservative) 1884
George Alexander (Conservative) 1891
John Sutherland (Independent) 1899
Louis-François-Rodrigue Masson (Conservative) 1903
Rufus Corry (Liberal) 1905
Michael Sullivan (Conservative) 1912
William Macdonald (Conservative) 1915
James Robertson (Liberal) 1915

The most recent attempt to disqualify a Senator came in 1979 when a Resolution would have been brought forward to disqualify Harold J. Connolly (Senator Carstairs' father). Connolly resigned after he had missed 2 consecutive sessions and shortly before a resolution would have been put before the Senate to disqualify him.

The Senate has never disqualified anyone for not being a "resident" of their province of appointment, providing they own property there.

The Senate (like the Commons) is considered to be an "Honourable" Chamber, where a member's word/oath is taken as true, so if they say they are a resident of province X and have a deed to prove it the other Honourable Members do not question this (similarly in the House of Commons all MPs give an oath to The Queen/Canada, yet we know members of the Bloc are not loyal but we don't question them on this). This convention would explain why no Senator has ever been disqualified on the basis of not being a resident of their Province of appointment.

Given that the Senate is the master of its own house in terms of the qualifications it is also right to assume that they can define precisely what "residence" constitutes, free from the definitions set out by Government Departments such as CCRA.

Nowhere in the *Rules of the Senate of Canada* are questions of residency or other qualifications (other than attendance) mentioned. Leaves of Absence and dealing with criminal convictions are examined, but Disqualification is not specifically covered.

I checked all of the authorities on the Senate and residency is not defined. My interpretation of this is that there has been a longstanding convention that so long as a Senator owns property in his or her province of appointment then they are allowed to sit as a Senator from that province, even if they live in Ottawa 99% of the time.

The last line of Section 31(5) of the Constitution provides what can best be explained as an "escape" clause in that it prevents Senators from being disqualified "*by reason only of his residing at the Seat of the Government of Canada, while holding an Office under that Government requiring his Presence there.*" A Senator cannot be disqualified for living in Ottawa, and it is again up to the Chamber to define what "requiring his Presence there" is. These are not issues which the Senate has bothered to define.

In terms of residence the other relevant sections are as follows;

Section 23

23.(5) He shall be resident in the Province for which he is appointed;
(6) In the case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

Section 31

31.(5) If he ceases to be qualified in respect of Property or of Residence; provided, that the Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada, while holding an Office under that Government requiring his Presence there.

At the time of appointment a Senator must make a declaration of the Province in which he or she is being appointed to as their place of residency, this is one of the oaths they take. The oath is sufficient proof of their residency, and it would be up to members of the Chamber to challenge that. From what I have read, this has never been done because it impugns the honesty of a fellow member.

For Quebec Senators the rules are slightly different, they do not have to live in their Senatorial Division, they just have to own property there and have their residence in the Province of Quebec (i.e. for Sen. Prud'homme he owns 2 homes in Montreal, 1 here in Ottawa, and property in the LaSalle Division, but he does not actually live in the LaSalle Division). As with Senators for the rest of Canada they are covered by the last line of section 31(5) which essentially allows them to live in Ottawa.

In all of these cases the Senator MUST continue to own property in their Province of appointment. For issues such as what province to file taxes in etc, new Senators are advised to consult the Law Clerk of the Senate.

Other Notes

"5. The only ground which has been invoked to declare a seat vacant by disqualification is that of non-attendance. This has been used several times."
Manual of Official Procedure of the Government of Canada, Vol 1, p. 531.